



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R01-OAR-2013-0109; A-1-FRL- 9800-1]**

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants:  
Connecticut; 111(d)/129 Revised State Plan for Large and Small Municipal Waste Combustors**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the Clean Air Act 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Energy and Environmental Protection (DEEP) on October 22, 2008. The revised Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated on May 10, 2006. Connecticut DEEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large and Small MWC units pursuant to 40 CFR part 60, Subparts Cb and BBBBB, respectively.

**DATES:** This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2013-0109 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov)
3. Fax: (617) 918-0653.
4. Mail: "Docket Identification Number EPA-R01-OAR-2013-0109", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 – 3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 – 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2013-0109. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

**FOR FURTHER INFORMATION CONTACT:** Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05-2, Boston, MA, 02109-0287. The

telephone number is (617) 918-1287. Mr. Bird can also be reached via electronic mail at [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

- I. What Is A State Plan?
- II. Why Does EPA Need To Approve State Plans?
- III. Why Does EPA Regulate Air Emissions from MWCs?
- IV. What History Does Connecticut DEEP Have With MWC State Plans?
- V. Why Did Connecticut DEEP Revise the MWC State Plan?
- VI. What Revisions Have Been Made to the State Plan?
  - A. Applicability
  - B. Emission Limits
  - C. Testing
  - D. Monitoring
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- VIII. Final Action
- IX. Statutory and Executive Order Reviews

## **I. What Is A State Plan?**

Section 111(d) of the Clean Air Act (CAA) requires pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop a state plan to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the State Plans.

## **II. Why Does EPA Need to Approve State Plans?**

Under section 129 of the CAA, EGs are not federally enforceable. Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State Plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR Part 60, Subpart B.

## **III. Why Does EPA Regulate Air Emissions from MWCs?**

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause

hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

#### **IV. What History Does Connecticut DEEP Have With MWC State Plans?**

On May 15, 2000, the Connecticut Department of Energy and Environmental Protection (DEEP), formally known as the Connecticut Department of Environmental Protection, submitted a section 111(d)/129 State Plan for implementing and enforcing EGs and NSPS for existing and new Large Municipal Waste Combustors (MWCs) pursuant to 40 CFR Part 60, Subpart Cb and Eb, respectively. While Subpart Cb and Eb applies only to Large MWCs capable of combusting greater than 250 tons of municipal solid waste (MSW) per day, Connecticut DEEP's State Plan and the Plan's enforceable mechanism, the Regulations of Connecticut State Agencies section 22a-174-38 (Section 38), applies to all MWC units within the State of Connecticut, regardless of combusting capacity. EPA approved this plan on April 21, 2000 (65 FR 21354).

Connecticut DEEP made four revisions to the Plan since it was originally approved. The first revision was submitted on November 28, 2000, and the second was submitted on October 15, 2001. These revisions involved changes to Section 38, including revisions to nitrogen oxides (NO<sub>x</sub>) limits and related regulatory provisions in the State's ozone SIP to further reduce NO<sub>x</sub> emissions from MWCs. Changes made in the first and second revisions were approved by EPA on December 6, 2001 (66 FR 63311).

On September 16, 2004, Connecticut DEEP submitted its third revision to the Plan. The third revision was in response to EPA's December 6, 2000 promulgation of NSPS and EGs for new and existing Small MWCs (40 CFR Part 60, Subpart AAAA and BBBB, respectively). Small MWCs are defined as MWCs capable of combusting between 35 and 250 tons of MSW per day. Certain monitoring, recordkeeping, and administrative requirements were added to Section 38 pursuant to the requirements of Subpart AAAA and BBBB. EPA approved this revised Plan on February 25, 2005 (70 FR 9226).

## **V. Why Did Connecticut DEEP Revise the MWC State Plan?**

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent

(90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criterion for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In response, Connecticut DEEP revised Section 38 a fourth time and submitted the revised State Plan to EPA on October 22, 2008. The submittal only addresses those portions of the State Plan that have been updated since EPA's April 21, 2000, December 6, 2001, and February 25, 2005 approvals. EPA is taking action on the October 22, 2008 State Plan revision in today's Federal Register.

## **VI. What Revisions Have Been Made to the State Plan?**



In previous versions of Connecticut DEEP's State Plan for Large and Small MWCs, the Plan and its enforceable mechanism applied to existing and new source MWCs. Connecticut DEEP included the two sets of requirements cognizant that a state plan only requires a state to develop an enforceable mechanism for existing sources. NSPS are independently applicable and federally enforceable, and therefore requirements for new units subject to the NSPS are not required in a state plan. The revised State Plan submitted to EPA on October 22, 2008 eliminates requirements for new MWCs within the State of Connecticut. The title of the Plan is changed accordingly, eliminating reference to NSPS.

Connecticut DEEP made several revisions to the enforceable mechanism (Section 38) of the State Plan. Revisions serve the primary purpose of amending the regulation in accordance with EPA's 2006 5-year amendments to Large MWC EGs(71 FR 27324). Connecticut DEEP has also made revisions outside the scope of EPA's 2006 revised MWC rule. The following subsections summarize the changes made to Section 38.

#### **A. Applicability**

Requirements for new MWCs are eliminated from Section 38 because NSPS requirements are independently applicable and federally enforceable, and therefore redundant in a state regulation. Applicability requirements and a definition concerning co-fired combustors are eliminated from Section 38 because no existing co-fired combustors operate within Connecticut DEEP's jurisdiction. Revised NOx emission limits in Section 38 are more stringent than NOx limits in RCSA section 22a-174-22, a state regulation to control NOx emissions. Connecticut DEEP is eliminating units subject to Section 38 from the applicability of RCSA section 22a-174-22 because of the more stringent NOx emission limits in Section 38.

**B. Emission Limits**

The emission limits for particulate matter, cadmium, and lead are reduced consistent with EPA's May 2006 EGs for Large MWCs. Emission limits for NOx and mercury were reduced beyond the limits set in EPA's May 2006 EGs for Large MWCs. The more stringent NOx and mercury limits are also being submitted for approval in the revised State Plan.

**C. Testing**

Section 38's annual performance test schedule is revised consistent with EPA's May 2006 EGs for Large MWCs to allow annual performance tests to occur no less than nine and no more than 15 months following the previous performance test. Initial performance test requirements are removed from Section 38 because they are not applicable to existing MWCs.

**D. Monitoring**

Relative accuracy criteria are added for sulfur dioxide and carbon monoxide, and operational indicator requirements are added to carbon injection systems used to control dioxin/furan or mercury. Revisions to monitoring requirements are consistent with EPA's May 2006 EGs for Large MWCs.

**E. Recordkeeping**

New provisions (subdivision (12) and (13) of subsection (k)) are added to Section 38 requiring more stringent recordkeeping requirements for MWC owners. These new requirements are beyond the scope of EPA's Large and Small MWC recordkeeping requirements, and Connecticut DEEP did not submit these provisions for approval into the Plan.

**F. Compliance**

Outdated compliance schedules are eliminated from Section 38.

## **VII. Why is EPA Approving Connecticut DEEP's Revised State Plan?**

EPA has evaluated the MWC State Plan submitted by Connecticut DEEP for consistency with the Act, EPA guidelines and policy. EPA has determined that Connecticut DEEP's State Plan meets all requirements and, therefore, EPA is approving Connecticut DEEP's Plan to implement and enforce the EGs, as it applies to existing Large and Small MWCs.

EPA's approval of Connecticut's State Plan is based on our findings that:

(1) Connecticut DEEP provided adequate public notice of public hearings for the proposed rule-making that allows Connecticut to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and

(2) Connecticut DEEP demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

## **VIII. Final Action**

EPA is approving Connecticut DEEP's revised State Plan for existing Large and Small MWCs. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as

the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **IX. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in

the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER**

**OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: March 27, 2013.

H. Curtis Spalding,  
Regional Administrator,  
EPA New England.

Title 40 Part 62 of the Code of Federal Regulations is amended as follows:

**PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED  
FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

## Subpart H - Connecticut

2. Section 62.1500 is amended by adding paragraph (b)(4) to read as follows:

### § 62.1500 Identification of Plan.

\* \* \* \* \*

(b) \* \* \*

(4) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on October 22, 2008. Revisions included amendments to Regulations of Connecticut State Agencies section 22a-174-38 (Section 38) in response to amended emission guidelines for Large MWCs (40 CFR Part 60, Subpart Cb) published on May 10, 2006 (71 FR 27324). Certain new provisions of Section 38 (subdivision (12) and (13) of subsection (k)) were revised in the state regulation, but not submitted for approval in the State Plan.

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[FR Doc. 2013-08648 Filed 04/11/2013 at 8:45 am; Publication Date: 04/12/2013]